Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

EATON CORPORATION,

Petitioner

v.

CITY OF DETROIT,

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Sixth Circuit

SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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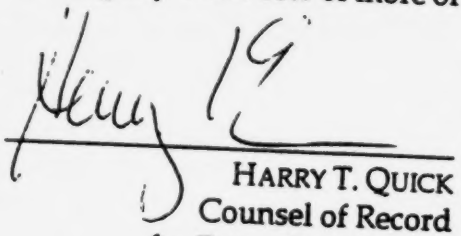
SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Eaton Corporation makes the following disclosure statement pursuant to S. Ct. R. 29.6:

Eaton Corporation is publicly held and has no parent corporation. No publicly held company owns 10% or more of Eaton Corporation's stock.



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for Eaton Corporation

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Respectfully submitted,

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UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT, a Michigan Municipal corporation,

Plaintiff,

vs.

Civil Action
No. 91-CV-75348-DT

GEORGE SIMON, JOSEPH SIMON, NORINA SIMON, SHIRLEY SIMON, MAURICE TAYLOR, MADELIENE TAYLOR, EATON CORPORATION, an Ohio corporation, U.S. GROUP, INC., a Michigan corporation, U.S. EQUIPMENT CO., a Michigan corporation, jointly and severally,

Defendants,

and

GEORGE SIMON, JOSEPH-SIMON, NORINA SIMON, SHIRLEY SIMON, U.S. GROUP, INC. , a Michigan corporation, and U.S. EQUIPMENT CO., a Michigan corporation,

Cross-Plaintiffs,

vs.

EATON CORPORATION, an Ohio corporation,

Cross-Defendant.

Proceedings had in the above-entitled matter before HONORABLE AVERN L. COHN, District Judge, United States District Court, Detroit, Michigan, on Tuesday, August 8, 1995.

APPEARANCES:

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U.S. Equipment Company

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WITNESS PAGE

No witnesses called at this time

EXHIBITS

Admitted

No exhibits offered at this time

Detroit, Michigan
Tuesday, August 8, 1995

- - -

THE COURT: Let's everybody be seated. Why don't we give our appearances to the reporter.

MR. FINK: Your Honor, David Fink, appearing on behalf of the City of Detroit.

MR. ACOSTA: Ruben Acosta, your Honor, appearing on behalf of the City of Detroit, also.

MR. QUICK: Harry Quick for Eaton Corporation.

MR. RUSSELL: Jim Russell for Eaton Corporation.

MS. O'FLAHERTY: Sharon O'Flaherty for Eaton Corporation.

MR. DAVIS: Robert Davis, Simon Defendants.

MR. FERREL: Tim Ferrel, Simon Defendants.

THE COURT: Okay. Let's do this in some sort of orderly fashion. What motions do you have, Mr. Fink?

MR. FINK: Your Honor, we have today a Motion for Entry of Settlement Judgment against Eaton Corporation. And we have a Motion for Summary Judgment against the Simon Defendants.

THE COURT: What motions does Eaton have?

MR. RUSSELL: Your Honor, we have a motion to reset this matter for trial on the same day on which the trial proceeds before. And we have on trial, your Honor, a response to the Plaintiff's Motion for Entry of Settlement Judgment, as you know.

THE COURT: I know.

MR. RUSSELL: And then we have a reply to the Simon's motion in opposition.

THE COURT: What motions does Simon have?

MR. DAVIS: Your Honor, the Simons have a Motion for Summary Judgment on the issue of liability against the City, and a Motion to Adjourn Trial.

THE COURT: Do you have anything you want to add to your motion papers, Mr. Fink?

MR. FINK: I don't believe I do, your Honor. I simply wanted to ask one question, though. We were just advised, I believe, that there's a motion for adjournment of trial. If it's a written motion, I don't think I've seen it, unless it was a response in the alternative to the Eaton motion.

MR. DAVIS: No, we have a response to their Motion to Set Trial, and we filed a Motion for Adjournment.

MR. FINK: I doubt that it would be complex for us to respond to that, your Honor, but I don't think I have it.

MR. DAVIS: All we did, your Honor, was for the reasons set forth in our response to Eaton's Motion to Set Trial.

THE COURT: It was filed August 4th.

MR. DAVIS: Right.

THE COURT: Do you have anything further?

MR. FINK: Until I see that motion, I don't know. I don't think we do, though, your Honor.

THE COURT: Mr. Quick or Mr. Russell, do you have anything to add to your papers?

MR. QUICK: No, your Honor.

MR. RUSSELL: No, your Honor.

THE COURT: Mr. Simon, do you have anything to add to your papers?

MR. DAVIS: Your Honor, no, but with respect to the City's Motion for Liability against us on the MIRA issue, I think that the City and I have discussed that and have come to some terms that would result in me not opposing that motion.

THE COURT: Okay. I guess the only thing is for the Court to make its decision. Did you have something, Mr. Fink?

MR. FINK: Well, I may have misconstrued the Court's

original question as to whether we had anything other than our papers. Obviously we are prepared to present at least some brief oral argument in support.

THE COURT: Well, I asked you if you had anything more you wanted to say. If you have something more you want to say, say it.

MR. FINK: I misconstrued what the Court had stated, had asked. I would simply call the Court's attention, I'm sorry, yes, I would like to say something else with the Court's permission.

THE COURT: Go ahead.

MR. FINK: I would like to keep in the, if I understand the Court's perspective today, wanting to limit our response or our comments to things that haven't already been said in the briefs.

THE COURT: Well, I think that's customary for a Court to want to limit comments to something that hasn't already been said. On the assumption that the Court has read the brief, and if what's said in the brief is repeated to the Court, then all that's happened is what the Court's already familiar with has been said to the Court.

That's the purpose of oral argument, to enlarge upon what the Court previously knew of the position. That's my understanding of the purpose of oral argument. All the hornbooks I've ever read on oral argument have said don't regurgitate the brief.

MR. FINK: And as such, the oral argument I wanted to offer was in response to the reply brief we received this week. And that is simply a response to point out a case that they cite in their brief, a Sixth Circuit case, the case of *Cutler v. National Distillers Products Company*, which at Page 622 contains the following statement by the Court of Appeals:

> "As was the case in Autura v Robinson, supra., and Massachusetts Casualty Insurance Company v Forman" –

And I would note to the Court that both of those cases were also cited by Eaton.

> "The purported settlement agreement here was never officially presented to the district court prior to the motion for entry of judgment thereon."

And we would simply say to the Court that that is the key distinction between the cases that they cited and the facts in our case and the cases that we have cited to the Court in our Motion for Entry of Settlement Judgment. In the cases they cited, the settlement was not placed on the record.

On the second day of trial, we came to this Court and indicated that we had a settlement. We then went through the important ritual of putting that settlement on the record. And while Defendants would quarrel with some of the transcription of what was stated on the record, I don't believe that, if read as a whole, that this Court can come away with any misunderstanding.

The Defendants would have us believe, I should say, the Eaton Defendant would have us believe that the parties agreed to on money only, leaving critical terms unresolved. That after I stated the decision, the agreement on the record, that while they disagreed with what I said on the record, they chose to not advise the Court that they so disagreed, and then they would have us all believe that in the middle of a trial with three live witnesses available for the City that day, and a deposition proceeding in Arizona, that this Court would allow the parties to all go home when they didn't have a settlement.

I won't go any further, your Honor, because I think that we have stated the essential points in our briefs. Although, of course, we are available to answer questions.

THE COURT: Anybody have anything more they want to say to the Court?

MR. RUSSELL: Your Honor, I had not intended to say anything, but -

THE COURT: I can't imagine that anything that's be said thus far should change your intentions.

MR. RUSSELL: Why don't I do this, your Honor, a see if I can reply in 60 seconds. Would that be acceptable w the Court?

THE COURT: Any amount of time you want, sir.

MR. RUSSELL: First of all, in environmen settlements, it's very common that the non-monetary eleme of settlement are the hard ones, the hardest ones to resol It's certainly true when you settle environmental cases w government agencies, and it's certainly true in private cro recovery litigation. So the fact that the non-monetary eleme of the settlement are unresolved shouldn't shock anybody this business, that's the rule.

Secondly, insofar as March 7, and I'll keep my second promise, I thought we were talking about contributi protection. This is the statute, as your Honor knows. Tha the statute that the Plaintiff pleaded, that's the term t Plaintiff used.

I thought we were going to reduce the contribution protection situation to written settlement agreement. That what the transcript says. And, your Honor, was kind enoug to offer help on that point should we have any difficulty.

If that were not the case, one might ask why t Plaintiff didn't ask us to sign the transcript, if it was definitive.

And, thirdly, we thought we were going to have a fu and final settlement. It's Eaton's right to not walk away fro just this litigation, but to walk away from this site, and that someday what they will do.

Lastly, in the case that Plaintiff attached to h response to Eaton's Motion to Set Trial, at the top of Page 1 there's some good language that perhaps your Honor note and I'm sure you probably did.

THE COURT: Wait a minute.

MR. RUSSELL: It's been the role of the District Court to -

THE COURT: Wait a minute. Wait a minute.

MR. RUSSELL: Okay. Top of Page 15.

THE COURT: Wait a minute. Wait a minute. Go ahead.

MR. RUSSELL: The top of Page 15 where they're citing the *Lang* case, I would not use the word "power," your Honor, but I would say a role to impose a settlement agreement when there was never a meeting of the minds, because a fact finder could not conclude that the parties intended that the agreement would be binding.

THE COURT: Without exception to the documents - execution of the documents by both parties.

MR. RUSSELL: Yes.

THE COURT: Is that the part?

MR. RUSSELL: Yes.

THE COURT: Oh, yes. That's found at Page 1256 of 53 Fed Rep 3rd, which would be the more appropriate way to submit it to the Court, it's now part of the reporting system.

MR. RUSSELL: Thank you, your Honor. I have only one other thing to add. If you'll note the part that the Plaintiff underscored on that page, or I guess you're referring to a different page than I am, but Plaintiff said there is no claim in this case that what transpired in the District Court hearing should not constitute settlement of the case. Well, that's the very point we're making. That's the very thing we believe in. Thank you, your Honor.

THE COURT: Does anybody have anything more they want to say to the Court than is in the papers? I want to be sure everyone has a full and complete opportunity to express themselves.

MR. DAVIS: Your Honor, on behalf of the Simon Defendants, we didn't file a response to the City's motion to establish our categorical liability under MIRA, and we would

offer right now that because this case has gone on a little bi
the law has changed. And in that, in those new amendment
there's a savings clause that reverts back to the old liabilit
scheme. And, your Honor, to the extent that the City
continuing to ask that we be named as a categorical liabl
party under that old scheme, we do not oppose their motion

THE COURT: Thank you. Is there anything mor
anybody wants to say?

MR. FINK: Finally, your Honor, if I may. The Eato
Defendants have again suggested that because this case wa
brought in part under CERCLA, that any reference t
contribution protection must be in the form that they viev
contribution protection under CERCLA.

First, I would call to the Court's attention a case at 84
F Supp 267 entitled *Akzo Coatings of America v Americar
Renovating Company*. The only reason I call that case to th
Court's attention, and your Honor had this argument, it wa
first seen by us in the pleadings that we received on Monday
in this form. The reason we reference this particular case, you
Honor, is because it is a case in which there was actually
settlement with the Federal Government. In that case
subsequent claim was brought by a party, and the defendan
says, since they've settled with the Federal Government, they
had contribution protection which would protect them from
any claim whatsoever. And the Court found there that claims
for public nuisance under state law was, in afct, not barred by
that so-called contribution protection.

Your Honor, this was not a case only under CERCLA
it was a case under MIRA. Throughout the settlement
discussions we indicated there would not be indemnification,
that was the reason I stated it on the record again, no
unlimited indemnification, and we did explain very clearly
that there would be protection related to contribution claims
only to the extent that those claims arose from claims brought
by the City of Detroit. That was something that I think was
very, very clear on the record. That's why we didn't just sign

the transcript. You don't enter a judgment by signing a transcript. That's why we filed a Motion for Entry of Judgment.

And, as the Court will note, our judgment tracks the words in the transcript very, very closely. We tried to keep it as close as possible to the actual words stated on the record in this courtroom, which were not objected to, and in fact, were affirmed by opposing counsel.

Thank you, your Honor.

THE COURT: This is an environmental clean up case. The case was filed on October 15, 1991 by the City of Detroit following its acquisition of the contaminated property.

In the acquisition documents, the City reserved the right to seek compensation for the cost of clean up. The complaint asserts a variety of claims under multiple statutes, against multiple defendants, including Eaton Corporation, which apparently owned the contaminated property from the mid '20's to the early '70's.

The course of litigation has been protracted and contentious. The case came to trial against Eaton on March 6, 1995. On March 7, 1995 the parties placed a settlement on the record. The settlement called for a definitive agreement to memorialize its terms.

Knowing the likelihood that the parties would disagree on the terms of the definitive agreement, the Court suggested that in the event of such disagreement, each party submit its version of the definitive agreement to the Court, and that the Court would then choose between the two versions, having in mind that each party's version would be consistent with the party's view of what had been agreed to on the record, and that the Court's role was to determine, as best it could, which version was most consistent with what had been agreed to on the record. Eaton agreed. The City equivocated.

The parties have been unable to agree on what was agreed to on the record. Eaton says it was paying

$1,300,000.00 for "peace of mind," and since it was clearly understood the City had no intention of actually cleaning up the contamination, it was also clearly understood that Eaton would forever not have to worry about the contaminated parcel coming in its ken again. While the City apparently agrees that it has no intention of actually cleaning up the contaminated parcel, it says it made clear that the limits of its "hold harmless" obligation was to assure Eaton that Eaton would never again have to worry about the contaminated property so far as anything the City did was concerned.

The parties disagree on whether Eaton was to have indemnification protection or contribution protection, however those terms may be defined.

Eaton submitted a draft of a definitive agreement to the City. The City says the draft is not consistent with what was agreed to on the record. The City apparently did not submit a counter-draft to Eaton.

Eaton has filed a motion to set the case against it down for trial on the grounds there was no definitive agreement reached on the record on March 7th, 1995. The City has responded with a Motion for Entry of Settlement Judgment, a part of which is a form of judgment which the City states is consistent with the record of March 7th, 1995.

This is one of the three oldest cases on the Court's docket. Resolution of the dispute between the City and Eaton does not conclude the case. There is still to be tried the City's claims against George Simon, et al., and Simon's third party claims against Eaton.

The statutes involved are complex. The distinction the parties draw on what was said on March 7th, 1995 involve arcane concepts of law and are based on a specialized glossary. The City may well be right that the protection for Eaton it agreed to was limited and that Eaton's concerns are at best speculative and conjectural.

On the other hand, Eaton agreed to pay $1,300,000.00 with, it says, the expectation it would have peace of mind and

get on with its corporate life. For the Court to sanction the City's view of the agreement reached on March 7th, 1995 would be inappropriate.

Assertions of environmental liability and the defenses have an element of gamesmanship. It sometimes seems that lawyers view such cases as fee generators, rather than efforts to properly allocate the expenses of cleaning up the environment.

For the reasons stated above, and for reasons of judicial economy and prudence, as well as the inability of the Court to determine precisely what the parties came to agreement on on March 7th, 1995 requires that this case go to trial.

Accordingly, Eaton's Motion to Set the Case Against it for Trial is granted, and the City's Motion for Entry of Settlement Judgment is denied.

Trial of the case will begin 9:00 o'clock August 14th, or immediately following the case currently on the Court's docket.

Insofar as the City's Motion for Summary Judgment against the Simons, it would be imprudent for the Court at this late date to give consideration to it, and for reasons of administrative convenience, the case against the Simons will be tried simultaneously.

The Motion for Summary Judgment by the Simons is denied. If the Simons have a claim against the City, it will have to be asserted at the trial. The City takes the position there is no such claim, because no complaint, or cross-complaint, or counter complaint, or however it's defined, has ever been filed against the City.

The Simon's Motion for Adjournment of Trial is also denied. A most expeditious, convenient, and prudent way disposing of this case from the Court's docket is to try all issues beginning, as the Court stated, August 14th at 9:00 a.m., or as soon thereafter as the Court's docket is clear for trial.

The Court will expect the parties to file the appropriate witness lists, exhibit lists, exhibit books, such stipulations of fact as are appropriate, and other matters to conveniently pursue -- to allow the case to conveniently go forward before the Court.

The Court appreciates the sincerity of the efforts made by all of the parties and is satisfied that given the level of competence of counsel, it will see them again next Tuesday morning, August 14th, at 9:00 a.m., or shortly thereafter, as soon as the Court is available.

The Court thanks each of you and wishes you all a good day.

MR. FINK,: Your Honor --

THE COURT: Yes, sir.

MR. FINK: May I, while we're still on the record, ask the Court if this matter, I realize the Court has responded to the Simon's motion, which was filed in anticipation of the Court's decision, which we have not responded to. I would reiterate and join in the Simon's request that this matter be briefly adjourned because the parties have been preparing for a very different trial than the trial that is now going to happen.

THE COURT: There will be no adjournment of the trial date as previously set under any circumstances. Thank you.

MR. FINK: Your Honor, while we're still on the record, I would also like to correct one thing on the record, if I may. The Court has stated that the City apparently did not submit a counter draft, and in fact, the record will reflect that it is even referenced in one of the Eaton briefs that the City did submit a counter draft.

The Court also referenced that the City had equivocated, and I would like the Court, if it is appropriate, to explain at what point the City equivocated in this case.

Finally, I would ask the Court if the Court would indicate on the record whether the Court is comfortable that it can, in fact, try this case without any bias with respect to the matters at issue, because the Court has repeatedly stated its

hostility to the claims and the form in which these claims have been filed.

THE COURT: The Court is satisfied that the Court can proceed with the trial beginning August 14th, 9:00 a.m., as previously indicated, and will be prepared to adjudicate the issues according to the law and the facts as the Court finds them. I don't think any further comment on the part of the Court is appropriate at this time.

Thank you.

MR. QUICK: Your Honor, if I just may on behalf of Eaton, I want to put on the record the fact that it will be almost impossible for Eaton to be ready to try the case on August the 14th.

THE COURT: Well, if it's not ready, it will be defaulted, Mr. Quick. That's perfectly clear. This Court, this is the second or third oldest case on the Court's docket. Everybody knows that the case was set for trial some weeks ago on August 14th, and I'm satisfied good lawyers can get ready in time and do it.

If, after we get into the trial, there's a need for a recess for further proofs, et cetera, the Court will always entertain it. This is a bench trial. You were prepared for trial once before, indeed you made opening statements. And if you'd like, I have the transcript of them from March 6th, and, I mean, you can use those if you want it, the transcript, you're more than welcome to it.

MR. FINK: May I approach the bench, your Honor?

THE COURT: Sure. So if you were ready once before, and I can't imagine why you can't be ready again.

It may be a bit of a struggle, I understand, Mr. Quick, and it may move slowly, but I think it will move steadily, and I'm satisfied that it can be properly tried. And the best way to conclude it is to try it.

Thank you.

MR. RUSSELL: Thank you, your Honor.

REPORTER'S CERTIFICATE

I, HERMAN H. TAPPERT, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings were had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Herman H. Tappert
HERMAN H. TAPPERT
Official Court Reporter

Detroit, Michigan 48226

C17

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT, a Michigan municipal corporation,

Plaintiff,

v.

GEORGE SIMON, ET AL.,

Defendants.

Civil No. 91-75348

FILED
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CLERK
U.S. DISTRICT COURT
EAST. DIST. MICH.
DETROIT

ORDER

The motion styled PLAINTIFF'S EMERGENCY MOTION FOR CERTIFICATION FOR INTERLOCUTORY APPEAL is DENIED.

The Court is satisfied that the question of whether the parties came to a complete agreement on the terms of the settlement of the City of Detroit's case against Eaton Corporation is one of fact. Clearly the parties contemplated a definitive agreement before their litigation was to be concluded. Absent a definitive agreement there was no settlement. A concession of liability is not an agreement as to the appropriate remedy.

This is the third oldest case on the Court's docket. Because the claims of the City of Detroit against George Simon, *et al.* and the cross-claims of George Simon, *et al.* against Eaton Corporation are still to be tried, settlement of the dispute between the City of Detroit and Eaton Corporation will not end this case. The most expedient and economical

way to conclude this case is to try the various claims among the parties. Allowing an interlocutory appeal at this time will only prolong the litigation.

SO ORDERED.

/s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: AUG 11 1995
DETROIT, MICHIGAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT,

Plaintiff,

v.

No. 91-75348

EATON CORPORATION,
and
GEORGE SIMON, JOSEPH SIMON,
SHIRLEY SIMON, NORMA SIMON,
U.S. EQUIPMENT CO., and
U.S. GROUP, INC.,

Defendants.

_____/

DECISION[1]

[1]This is an edited version of the Court's bench decisions of May 7, 1998 and September 28, 1998.

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C. City's Expenses To Date

VIII. Conclusion

I. Introduction

This is an unexceptional environmental cleanup case filed October 15th, 1991. It has been overlawyered by plaintiff City of Detroit (City) and stubbornly defended by defendant Eaton Corporation (Eaton), the principal culprit in the contamination activities at issue. Defendants George Simon, Joseph Simon, Norina Simon, Maurice Taylor and Madeline Taylor, U.S. Group, Inc., and U.S. Equipment Company (the Simons), also responsible for some of the contamination, have more or less stood by while the City and Eaton unnecessarily exaggerated the proceedings (see the 237 docket entries thus far) by hypothetical assertions hardly worthy of a municipality looking to attract industry and a major American corporation.

The parcel in question is a 15-acre site at 9733 Grinnell Avenue on the east side of Detroit formerly occupied by a large factory and associated structures. Because the parcel has only been partially leveled with the factory floor still in place, the scope of the work and expenses to be incurred to remove the contaminants to make the parcel useful for either industrial or commercial use is unknown. Indeed, it is questionable whether the parcel will ever be cleaned up since the City acquired the parcel to clear the approaches to the Detroit City Airport. See 14 C.F.R. 151.9, establishing standards for runway clear zones.

The City seeks a judgment for monies already spent on securing the parcel and investigating the extent and likely sources of contamination. The City also seeks a declaration of who is responsible for future expenses necessary to clean up the parcel if and when it is cleaned up. Eaton and the Simons, while admitting some responsibility for the contamination, point fingers at each other and, rather than joint and several liability, would like the Court to apportion liability with the City included in the apportionment.

A more detailed background of the case is reflected in the Memorandum and Order of July 10, 1992, stripping the case of some of the excesses in the City's complaint, and the Memorandum of September 28, 1994, imposing liability on the Simon defendants for the $126,190 spent by the City in cleaning up contaminants caused by an improper release of PCB'S.

A partial final judgment of $156,619.91 was entered against the Simons on the PCB cleanup on April 17, 1995, nunc pro tunc to December 5th, 1994. What the Court said in the memorandum of September 28, 1994, bears repeating:

> The Court recognizes the brevity of this Memorandum in light of the length of time this case has been pending, the extended record, and the customarily complicated opinions CERCLA cases usually generate. Given the straightforward progression of the steps the City followed from the time it acquired the property and defendants' involvement with the contamination, the acquisition and what followed, a longer and more detailed memorandum is not necessary. Likewise, there is no need for a discussion of the precedents in this area of the law.

Memorandum dated September 28, 1994 at 4 (footnote omitted).

So to here, notwithstanding the 1 0 days of trial, the 13 witnesses who testified in person or by deposition, and the 87 exhibits, there is no mystery about the law in this area. Two statutes are involved. The Environmental Response Contamination and Liability Act Of 1980 (CERCLA) 42 U.S.C. § 9601 *et seq.;* and Michigan's Natural Resources and Environmental Protection Act (NREPA) M.C.L. § 324. 101, *et seq.* While the configuration of NREPA changed during the course of the case, the changes do not significantly affect defendants' liability.

The differences between CERCLA and NREPA are not significant. *See Kelly ex. rel. State of Mich. v. Kysor. Indus. Corp.*, 826 F.Supp 1089, 1094 (W.D. Mich. 1993). Contrary to Eaton's assertions, both statutes allow for a declaratory judgment. As will be discussed, the petroleum exclusion in CERCLA does not help Eaton and, even if it does, NREPA fills the void. The cases and law review articles in this area of the law are legion and will be referred to only as necessarily related to the particulars of the case. Essentially the City must prove that, in statutory jargon:

A. A defendant was an owner and/or operator of the parcel;

B. A release of a hazardous substance occurred on the parcel prior to or at a time that it was owned or operated by a defendant;

C. The parcel was a facility; and

D. The City incurred response activity costs resulting from the release of hazardous substances.

What is difficult about this case are the unknowns even at this late date in its history. The City acquired the parcel in 1988 to remove a flight path obstruction. When it acquired the parcel, it knew of the contamination and reserved the right to pursue reimbursement for the expenses of cleanup when it paid the Simons, the then owners.

After the City took possession of the parcel in 1993, it demolished the factory building and associated structures on it, cleaned up the PCB'S, and through consultants made a detailed study of the contamination. These studies do not tell the full story since a portion of the parcel is still covered by a concrete factory floor.

The Simons' were obviously aware of the potential for liability. Eaton was also aware of the potential for liability. Eaton, with some difficulty occasioned by its inability to agree with the City on the conditions for access to the parcel, did its own assessment of the contamination. Why the City and

Eaton have been unable to resolve their differences is unknown when settlement is obviously the preferred method of resolving this kind of case. The Simons appear to have been ready at all times to get the case behind them.

What follows are the findings of fact and conclusions of law required by the Federal Rules of Civil Procedure. As will be discussed, the Court will not stop with a determination of joint and several liability. After all of the effort that has gone into this case, the Court will apportion liability between the City, Eaton and the Simons.[1]

At best, the apportionment, while percentage-wise definitive, is an educated guess. There is simply no way at this time, even with all of the investigative effort that the parties have expended, to determine with scientific accuracy the extent of the parcel's contamination and what exactly must be done to put it in usable condition. This is not a case involving an oil spill.

Likewise, there is no way the Court can divide responsibility with mathematical certainty for the expenses already incurred in securing the parcel and investigating the causes and scope of contamination. What is certain is that the parcel is contaminated and, by and large, that the contamination was caused first by Eaton's manufacturing operations for the 48 years it owned the parcel from 1924 to 1972 and then by the Simons' storage operations for the 20 years it owned and occupied or leased the parcel from 1972 to 1992.

II. The Parcel

The parcel consists of 15 acres at the northwest corner of French Road and Grinnell Avenue immediately south of

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[1]A copy of the Judgment entered December 10, 1998 is attached as Exhibit 3.

Detroit City Airport. About half of the parcel was formerly occupied by a factory building and associated structures. The unoccupied areas were used principally for parking and outside storage. It had rail access through a track on the north side. Much of the in-and-out activity was by truck.

Exhibit 1 to this Decision is an aerial photograph of the parcel as developed. Exhibit 2 displays the parcel as developed as well as areas of heavy concentration of contaminants from Eaton's quench oil operations. Not shown is the piping system which interconnected the parts of the quench oil operation. Additional drawings in the record display the specific characteristics of the soil at monitoring wells and soil boring and soil sample locations described in the reports of the various experts.

The contaminants present at these various locations in various combinations and concentrations include, arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, zinc, acenaphthene, ethylbenzene, naphthalene, fluoranthene -- toluene and xylene. The expert testimony at trial attempted to correlate these metals and volatiles to the various contaminating solids and liquids present in the operations of Eaton and the Simons such as quench oil, fuel oil, gasoline, water soluble oils sprayed on parts to prevent corrosion, hydraulic oils, steel scale residues, transformer oils, cleaning solvents, metal chips, and sludge. There was no credible testimony which fairly located each of the various contaminating solids and liquids to particular areas of the parcel as is frequently done in the oil spill cases.

The surficial soil is a fill consisting of sandy soils and rubble with underlying clay. There is no downward migration of water so that none of the contaminants have a migratory potential. The groundwater flow patterns do not present a danger. The contaminants consist of petroleum compounds and heavy metals. None of the volatile organic component contaminants which are normally found in gasoline and oil are found freestanding with one possible exception.

Contaminants associated with metals and contaminants associated with oil and gasoline are almost always found in combination.

The specific areas which constitute source areas of contamination beyond the perimeter of the concrete slab of the factory floor are: the scale dump area in the northwest corner; two above-ground quench oil storage tanks in the northwest area; the propane tank cradle area in the western part; the pump house area along the northern boundary; an underground gasoline tank in the west area; an underground gasoline tank in the east area; and an area along the north boundary formerly occupied by a 20,000-gallon fuel oil storage tank.

III. Eaton

A.

Eaton acquired the parcel with the factory buildings already in place in 1924. Over the years of its ownership and occupancy, Eaton manufactured mechanical springs and other metal parts for the automobile industry, including suspension coil springs and leaf springs.

The manufacturing operations included heat-treating to strengthen the springs. In heat-treating, the springs were run through a high-temperature furnace and then cooled in a petroleum bath liquid known as quench oil. Quench oil is a low-grade petroleum product with rather specific characteristics.

The quench oil system consisted of three hot baths-, underground storage tanks, a cooling bath, above-ground storage tanks, and a pump house, all interconnected by a system of pipes. The quench oil flowed between and among tanks and baths under pressure from pumps in the pump house. Approximately 40 to 50 thousand gallons of quench oil was in the system at any one time. The quench oil was replenished from time to time to replace quench oil lost from

the hot baths catching fire and from sludge dropping from the bottom of the hot baths, cooling baths, and tanks, when metal particles chipped off the springs in the manufacturing process and as they moved along the production line. On occasion, the hot and cold baths were closed down and the sludge removed to a dry area in the northwest corner of the parcel.

Eaton was not a good housekeeper. It's care of the quench oil system extended only to insure its operability. In the 1960's there was a pipe break in the system from which about 6,000 gallons of quench oil leaked into the soil beneath the factory floor. While the break in the pipes was repaired, little of the 6,000 gallons was recaptured. When Eaton vacated the parcel, it drained the system. It did not remove any of the tanks.

Eaton's manufacturing operations also involved: a 200,000-gallon fuel oil tank which it removed in the 1950's; water soluble oils sprayed on parts to prevent corrosion; gasoline, including two underground storage tanks at the east and west of the factory building; hydraulic oil in machines which was usually stored in reservoirs in the machines; and the steel from which the springs were manufactured. In the 48 years of Eaton's operations it also stored reserves of the various oils in 55-gallon drums, and the steel used in manufacturing springs.

B.

Eaton's principal effort at trial was to correlate the specific chemical characteristics of quench oil to the specific chemical characteristics of the samples obtained from the soil borings and monitoring wells to establish that the contaminants present in the samples were not characteristics of quench oil. This of course did not account for the contaminant characteristics of steel, nor did it have any relevance to what is likely still underneath the concrete slab as a residue of the quench oil spill and the leakage and general deterioration of the quench oil system.

C.

The Court is satisfied that the principal sources of contamination of the parcel are proximately related to Eaton's manufacturing operations. Eaton was the longest occupant, and its manufacturing operations reflect the most intense use of the parcel. As previously noted, environmental concerns were not an Eaton priority. Indeed, there was no testimony that suggested they were even an agenda item for Eaton.

IV. Simons

The Simons bought the parcel in 1973. For the years 1976 to 1985 the parcel was leased to General Motors Corporation which used it, interior and exterior, for the storage of raw steel, dyes, and fabricated steel products. Traffic in and out was by truck. From 1985 to 1993, the Simons used the parcel for inside storage of industrial machines. Again, traffic in and out was by truck. During the years the Simons owned and occupied the parcel, the quench oil system of tanks and baths and pipes remained in place and likely further deteriorated.

During these years there was some rail traffic and extensive automotive, truck and forklift truck traffic. Gasoline was used and stored on the parcel. The machines on on the parcel contained hydraulic oil. The machine parts and dyes were sprayed to prevent corrosion. Cleaning solvents were used. Metal parts and the machines chipped. The roof leaked. The concrete floors were cracked. While General Motors was a good housekeeper, it and the Simons, like Eaton, did not give much attention to environmental matters.

The Simons' use was considerably less intense than Eaton's but not insignificant. To what extent cracks in the factory floor allowed for oil spillages to seep through to the soil below is unknown. Some of the soil, soil boring and monitoring well boring samples display chemical characteristics related to metal solids and the liquids present

in the Simons' operation. This of course means that some of the yard area contaminants are attributable to the Simons. However, the initial cleanup by the City likely removed any concrete floor contaminants traceable to the Simons.

V. The City

Upon acquiring the parcel, the City demolished the factory structures and cleaned up free oil present in the northeast corner of the parcel in the area of the above-ground storage tanks and steel scale storage pits. The City removed and disposed of the two above-ground quench oil storage tanks and abated the flow of free oil in their area. The City also cleaned up the PCB contamination attributable to the Simons.

Additionally, the City secured the parcel and did an extensive environmental study through soil, soil borings and monitoring well sampling. The samples obtained were subject to gas chromatograph scans and known to unknown "fingerprints" comparisons.

The City's environmental studies found significant oil contamination beneath the concrete floor. A current physical examination of the parcel suggests that the City has not been an exemplary housekeeper in its demolition and cleanup, and that it did not conduct its demolition and cleanup with as much care as was reasonably possible.

VI. The Petroleum Exclusion

Eaton's reliance on the petroleum exclusion in CERCLA, 42 U.S.C. § 9601(14), *i.e.* the definition of "hazardous substance" expressly excludes "petroleum, including crude oil or any fraction thereof not specifically listed or designated as a hazardous substance," is misplaced for two reasons. First, there is no such exclusion under NREPA and, as will be discussed, NREPA does not preclude

a declaratory judgment as to future liability. More importantly, there is a clear distinction in the precedents between "reusable" petroleum, which is excluded, and "waste" petroleum, which is not excluded, and which characterizes the petroleum product involved in Eaton's operations.

Here, the petroleum product involved in Eaton's operation was quench oil, a very low grade of petroleum used as a cooling bath for metal parts hardened in a heat-treating furnace. The quench oil, as described above, was confined to a closed loop running in and out of a number of open and closed tanks through which various forms of metal springs were passed. As the quench oil was recycled through the system, it became contaminated by minute particles of metal or scale so that from time to time open tanks had to be taken out of the system and the sludge formed by a combination of quench oil and metal scale removed. The amount of quench oil in the system remained constant, to be replenished from time to time by the loss occasioned by the formation of sludge and by quench oil which caught fire and burned off. Clearly, the quench oil which escaped the system through leakage or otherwise was a waste product and not reusable.

Under these circumstances the petroleum exclusion simply does not apply. The quench oil fragments and samples tested showed the presence of hazardous substances that clearly fall within the NREPA and CERCLA proscriptions and are likely the result of heavy metal scrapings, etc. In *Mid Valley Bank v. North Valley Bank*, 764 F.Supp 1377, 1384 (E.D. Cal. 1991), adulterated waste oil coming from corrosion or leaking of underground tanks was found to fall outside the exclusion. The facilities in question had been used to store gasoline, diesel and waste oil. Lead, zinc and thallium were among the substances released. Id. at 1382. In *United States v. Western Processing Co., Inc.*, 761 F.Supp 713, 721 (W.D. Wash. 1991), tank bottom sludge containing a rust-like scale of corrosion products from the oxidation of steel in tank walls was held not to be "petroleum." The "contaminants" in

question were substances not normally found in petroleum. *See also, State of Wash. v. Time Oil Co.*, 687 F. Supp. 529, 532 (W.D. Wash. 1988) (exclusion does not apply where contaminants are found in petroleum in excess of those normally occurring in oil refining process).

In contrast, in *Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801 (9th Cir. 1989), the petroleum exclusion was held to apply to leaded gasoline because the lead present, although a hazardous substance, was indigenous to gasoline as refined. As explained in *Niecko v. Emro Marketing Co.*, 769 F.Supp 973, 981 (E.D. Mich. 1991):

> [The] "petroleum exclusion" has been universally interpreted by both the Environmental Protection Agency and the courts to remove from the coverage of CERCLA those otherwise hazardous substances which are inherent in petroleum, but not hazardous substances that are added to, or mixed with, a petroleum product during or after use.

In *Nieko* the contaminants found were benzene, toluene, ethyl benzene and xylene. These are indigenous components of gasoline. 769 F. Supp. at 982.

Here the volatiles found were associated with contaminants related to heavy metals. As stated by the Simons:

> Here Eaton's quenching system circulated oil throughout the facility via piping and holding tanks. The oil admittedly left behind by Eaton is no longer "product" like because it has been contaminated by the process, discharged to the ground, and has otherwise legally become a waste.

Simons Defendants' Revised Post Trial Brief, p. 6.

VII. Relief

A. Introduction

A complete cleanup of the parcel is still in the future. What Detroit now seeks is a declaratory judgment determining liability for the expenses that it will incur at some later date when it decides to put the parcel to some presently unknown use. Both NREPA and CERCLA provide for such judicial decision making at this juncture of the cleanup of a contaminated parcel. To hold otherwise would require a lawsuit following each phase of a total cleanup. The text of NREPA is silent on the point, and there is nothing in Michigan's declaratory judgment law jurisprudence to deny the Court such authority. CERCLA is explicit on the point, 42 U.S.C. 9613(g)(2). As noted in *Kelley v. E. I. DuPont De Nemours and Co.*, 17 F.3d 836, 845 (6th Cir. 1994):

> Given that the probability of subsequent activity in such instances is more likely than remote, it would waste State, corporate and judicial resources, and add immensely to already 'elephantine carcass of ... CERCLA litigation' to require relitigation of liability whenever such subsequent response action is taken.

B. Apportionment of Liability

Detroit takes the position that the liability of Eaton and the Simons is joint and several because the harm they caused is indivisible since it is impossible to determine relative contribution in a meaningful way. *Kelley v. Thomas Solvent Co.*, 727 F. Supp. 1532, 1552 (W.D. Mich. 1989). To avoid joint and several liability, Eaton and the Simons must prove that the harm they caused is divisible. *United States v. Chem-Dyne Corp.*, 572 F.Supp 802, 811 (1983).

Here we have both the same and different contaminants from the activities of Eaton and the Simons.

Quench oil contamination is clearly from Eaton's activities. Other oils, hydraulic and coating as well as other contaminants, come both from Eaton's activities and the Simons' activities. Measured by length of time and intensity of use, Eaton caused significantly more of the harm than did the Simons. Also, in some modest way, the City through carelessness in its investigation and cleanup activities, as well as the manner in which it secured the parcel, could have contributed to the harm.

It would be a disservice to the parties as well as a waste of judicial resources if the Court did not make an attempt at apportionment instead of leaving to another day apportionment of liability for the expenses of future cleanup activities. Fortunately the law, statutory and case, provides the opportunity for such an effort in the manner in which it provides for determination of contributions among liable parties. As to NREPA, see M. C. L. § 324.20129(3), and as to CERCLA, see 42 U.S.C. § 9613(f)(1). Under both statutes the Court is given wide latitude in applying appropriate equitable factors. NREPA explicitly lists the following factors:

A. Each person's relative degree of responsibility in causing the release or threat of release.

B. The principles of equity pertaining to contribution.

C. The degree of involvement of and care exercised by the person with regard to the hazardous substance.

D. The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

E. Whether equity requires that the liability of some of the persons would constitute a single share.

M.C.L. 324.20129(3).

The substance of these factors was first discussed during the course of legislative amendments to CERCLA in 1986, H.R. Rep. No. 99-253 (III) (1985), reprinted in 1986 U.S.C.C.A.N. 2835, 3038, 3042, and discussed in *Amoco Oil Co. v. Borden, Inc.*, 889 F.2d 664 (5th Cir. 1989), as clarified on denial of rehearing (5th Cir. 1990).

When the harm is divisible, damages may be apportioned. *O'Neil v. Picillo*, 883 F.2d 176, 178-79 (1st Cir. 1989). This principle was recognized in *In the Matter of Bell Petroleum Services*, 3 F.3d 889 (5th Cir. 1993), where the court noted that while joint and several liability is commonly imposed, it is not mandatory if it can be apportioned. Id. at 895-96, *citing* Restatement (Second) of Torts § 443. The Court said that if there is a reasonable and just method for determining the amount of harm caused by each party it should be followed. Id. The assumptions to be used must be well founded and reasonable.

Also to be noted is the principle that the current land owner may sometimes bear some responsibility for past activity. *See The South Florida Water Management District v. Juan Montavloe*, 1989 W.L. 260215 (S.D. Fla. 1989).

During the trial the Court was of the view that Eaton should bear the lion's share, Tr. 9/7/95 at 1440-1441, in the ratio of 95 to 5. On reflection, the Court is of the view that a more sophisticated analysis is appropriate taking into consideration the gross areas of contamination, the impact of Eaton's quench oil operation, and the length of time Eaton and the Simons each occupied the parcel. The analysis which follows endeavors to do that and to take into consideration the fact that Eaton was environmentally careless during its occupancy and that the Simons were also environmentally careless during their 20 years of ownership and occupancy, and that hydraulic and coating oils were an important part of the Simons' activities.

The parcel is 15 acres in size or approximately 645,000 square feet. About half of the parcel is contaminated or 322,500 square feet. Considering Eaton's operations, it should be exclusively responsible for one-third of the contaminated area or for 107,500 square feet. Likewise, the cradle area of 1 0,000 square feet should be Simons' responsibility alone. For the balance of the area, or 205,000 square feet, Eaton and the Simons should share responsibility equally less 5 percent attributed to the City.

While this allocation may appear arbitrary, it is the Court's best judgment as to a proper apportionment of the expenses to be incurred in the past and in the future. Applying this formula yields the following:

A. Total area to be cleaned up: 322,500 square feet.

B. Eaton's exclusive responsibility: 107,500 square feet.

C. The Simons' exclusive responsibility: 1 0,000 square feet.

D. Eaton, the Simons and Detroit's responsibility: 205,000 square feet.

The percentage apportionment of responsibility is as follows:

1. Eaton, 33%
2. The Simons, 3%.
3. Joint, 58.7%
4. City, 5%.

The apportionment between Eaton and the Simons based on years of ownership is as follows:

1. Eaton occupied the parcel from 1925 to 1973 or 48 years.
2. Simons occupied the parcel from 1973 to 1993 or 20 years.

Multiplying this apportionment by the percentage of joint liability, and adding the resulting figure to the individual liability figure, results in the following apportionment

reflected in the Judgment: Eaton, 74.94%; Simon, 20.06%; Detroit, 5%.

C. City's Expenses To Date

The parties agree that the City has spent thus far $247,402 relating to cleanup of the parcel, including $137,757 that was paid for an environmental assessment. The remainder was spent for cleanup and removal of underground storage tanks, acutely contaminated soils and water, fencing, soil samplings, and investigation and inspection and reporting. These expenses are, in statutory parlance, Response Costs and Response Activity Costs, and the City is entitled to payment for them at this time. The costs which are reflected in the totality of the expenses include studies, sampling and analyzing of soil and ground water conditions. These costs are recoverable under NREPA as a cost of evaluation, Mich. Comp. Laws 324.20101(l) and under CERCLA as a cost of removal, 42 U.S.C. 9601(23).

Further, the City was not required to conform its actions with the National Contingency Plan's (NCP) comment/participation requirements. Cleanup is not yet at its final stages. See *Donahey v. Bogle*, 987 F.2d 1250, 1255-56 (6 th Cir. 1993), *vacated and remanded on other grounds*, 512 U.S. 1201 (1994), *reinstated and reaffirmed in relevant part*, 129 F.3d 838 (6th Cir. 1997).

In any event, NREPA does not require compliance with NCP. The $247,402 amount simply relates to the expense of actions immediately necessary to secure the parcel and in advance of determination of the actions necessary for a complete cleanup. *Pierson Sand & Gravel. Inc. v. Pierson Township*, 89 F.3d 835 (6 th Cir. 1996), is not to the contrary. In that case an effort was made to obtain remedial costs without complying with the NCP, and the plaintiff did not separately claim for remedial investigative costs. Likewise, in *Sherwin Williams Co. v. City of Hamtramck*, 840 F. Supp. 470 (E.D. Mich. 1993), the City of Hamtramck failed to comply

with the NCP. There the Court distinguished between a removal action which does not require compliance with NCP and a remedial action which does. Id. at 475.

VIII. Conclusion

This has been an inordinately long and contentious case. CERCLA and NREPA are not so obtuse as to need an academic mind to fathom and so ambiguous as to dissuade a good lawyer from advising a client as to the potential for liability. Notwithstanding the uncertainty as to the extent and nature of the cleanup necessary to make the parcel usable, the history of use by Eaton and the Simons was fairly straightforward and their lack of concern for environmental damage from the way they used the parcel is clear-cut.

The City was perhaps a bit foolish in buying the parcel without an agreement with the Simons about cleanup. However, since the Federal Aviation Administration insisted on removal of an obstacle in the flight path to City Airport (really only a small corner of the factory building in the northeast corner about ten feet too high) and was willing to reimburse the City for the cost of acquisition, it was perhaps understandable for the City to proceed as it did.

Filing suit in 1991 was a likely worthwhile precaution. It put Eaton and the Simons on notice. Proceeding with vigor to obtain at best a declaratory judgment of uncertain content because of the vagueness of future use and the indetermination of the scope of contamination is difficult to understand. Certainly the City was entitled to be paid for the expenses of cleaning up the PCB'S. The investigation of the parcel's contamination should have been a joint effort with agreement as to sharing of costs for the investigation. Instead, Eaton and the City went at each other like gladiators in the Roman Forum with no expense spared and no holds barred. The Court, as much as it tried, was unable to contain the

excesses. All of the worst that is displayed in complex litigation was on stage here.

/s/ Avern Cohn
AVERN COHN
United States District Judge

DATED: JAN 1 9 1999
Detroit, Michigan

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CLOSED DEC 10 1998

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CITY OF DETROIT,

Plaintiff,

v. No. 91-75348

EATON CORPORATION,

and

GEORGE SIMON, JOSEPH SIMON, SHIRLEY SIMON, NORINA SIMON, U.S. EQUIPMENT CO., and U.S. GROUP, INC.,

Defendants.

JUDGMENT

This action came to trial before the Court. The issues have been heard and a decision rendered on May 7, 1998 and supplemented on September 28, 1998.

IT IS ORDERED AND ADJUDGED

I.

A. 1. Eaton Corporation (Eaton) and George Simon, Joseph Simon, Norina Simon, Shirley Simon, U.S. Group, Inc. and U.S. Equipment Co. (Simons) are liable to the City of Detroit (City) for Response Activity Costs under Mich. Comp. Laws §§ 324.20126 and 324.20129 (NREPA) and for Response Costs under 42 U.S.C. §§ 9607 AND 9613 (CERCLA) in the amount of $247,402 in connection with hazardous substance

contamination at the property commonly known as 9773-10227 Grinnell Avenue, Detroit, Michigan (property).

2. Eaton's allocable share is 74.94%. Simons' allocable share, jointly and severally is 20.06%.

3. The City of Detroit's (City) allocable share is 5%.

B. Eaton and Simon are liable for interest on their allocable shares as of October 31, 1998 in the amount of $154,807.

C. 1. As of October 31, 1998 Eaton's total liability is $301,415.

2. As of October 3, 1998 Simons' total liability is $80,683.

3. Interest shall accrue on the foregoing amounts at the rate set forth in Mich. Comp. Laws § 324.20126a(3) from November 1, 1998 to date of payment.

II.

A. Eaton and Simons are liable for future recoverable Response Activity Costs and Response Costs to be incurred by the City in connection with hazardous substance contamination at the property as determined by the Court in its findings of May 7, 1998 and September 28, 1998 to the extent that such recoverable Response Activity Costs are incurred in a manner consistent with Mich. Comp. Laws § 324.20126 and/or such recoverable Response Costs are incurred in a manner consistent with 42 U.S.C. § 9607.

B. Eaton and Simons shall not be liable for future Response Activity Costs or Response Costs

1. Not confined or related to, migrating from, and or commingled with

the contamination on the property within the area designated on Exhibit A.

2. Incurred to achieve a clean up level in excess of the industrial clean up category in Mich. Comp. Laws § 324.20120a(1)(d).

C. Eaton's allocable share of future liability is 74.94%. Simons' allocable share of future liability is 20.06%.

III.

A. The Amended Judgment in the amount of $158,619.91 entered December 5, 1994, nunc pro tunc April 17, 1995, a copy of which is attached as Exhibit B, and this Judgment, together constitute the final judgment in this case.

B. 1. The Amended Judgment has accrued interest as of October 31, 1998 in the amount of $77,599.

2. Interest shall continue to accrue on the Amended Judgment at the rate set forth in Mich. Comp. Laws § 324.20126a(3) from November 1, 1998 to date of payment.

AVERN COHN
United States District Judge

DATED: DEC 10 1998
Detroit, Michigan

Ruben Acosta
Bob David
Jim Russell
Harry Quick
12/10 1998

0713

EXHIBIT "A"
0714

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

EASTERN DISTRICT OF MICHIGAN

CITY OF DETROIT,

Plaintiff,

V.

GEORGE SIMON, et al,

Defendants.

AMENDED

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 91-75348

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial and hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the City of Detroit recover from defendants George Simon, Joseph Simon, Shirley Simon, Norina Simon, U. S. Equipment Co., and U. S. Group, Inc., jointly and severally, as follows:

1. $126,170 for past response costs and response activity costs in connection with the PCB contamination
2. $20,074.91 for prejudgment interest
3. $10,375 for attorney fees

for a TOTAL amount of $156,619.91.

FILED
MAR 17 1995
U.S. DISTRICT COURT
EASTERN DIST. OF

December 5, 1994(nunc pro tunc)
Date April 17, 1995

JOHN P. MAYER
Clerk

(By) Deputy Clerk JUDY CASSADY

EXHIBIT "B"

0715

11.C